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DISTRICT OF ARIZONA	
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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE DISTRICT OF ARIZONA  
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8 Jose Gregorio Vargas )  
9 Plaintiff, )  
10 v. ) CIV 04-2641 PHX FJM (VAM)  
11 Ronald Ayers, et al., ) O R D E R  
12 Defendants. )

13 On November 22, 2006, plaintiff filed a motion for  
14 appointment of counsel. There is no constitutional right to  
15 appointment of counsel in a civil case. See Ivey v. Board of  
16 Regents of University of Alaska, 673 F.2d 266 (9th Cir. 1982);  
17 Randall v. Wyrick, 642 F.2d 304 (8th Cir. 1981). Moreover, the  
18 only statutory authority creating a basis for appointment is 28  
19 U.S.C. §1915(e)(1), which confers on the court the discretion to  
20 appoint counsel to represent an indigent civil litigant. Aldabe  
21 v. Aldabe, 616 F.2d 1089 (9th Cir. 1980). The Court cannot compel  
22 a lawyer to represent an indigent plaintiff. Mallard v. U.S.  
23 District Court for the Southern District of Iowa, 490 U.S. 296  
24 (1989). An appointment of counsel may be requested under 28  
25 U.S.C. §1915(e)(1) only in "exceptional circumstances." Aldabe,  
26 616 at 1089; Wilborn v. Escalderon, 789 F.2d 1328 (9th Cir. 1986).  
27 This rule is derived from Weller v. Dickson, 314 F.2d 598,  
28 600 (9th Cir.), cert. denied, 375 U.S. 845, 84 S.Ct. 97, 11

1 L.Ed.2d 72 (1963) which held that "the privilege of pleading in  
2 forma pauperis . . . in civil actions for damages should be  
3 allowed only in exceptional circumstances." See Wilborn, 789 F.2d  
4 at 1328. Weller was extended, without apparent comment, to  
5 "appointment of counsel" in United States v. Madden, 352 F.2d 792,  
6 794 (9th Cir. 1965). Madden was then cited for the rule in  
7 Alexander v. Ramsey, 539 F.2d 25, 26 (9th Cir. 1976); United  
8 States v. McQuade, 579 F.2d 1180, 1181 (9th Cir. 1978), on appeal  
9 after remand, 647 F.2d 938, 940 (9th Cir. 1981), cert. denied, 455  
10 U.S. 958, 102 S.Ct. 1470, 71 L.Ed.2d 677 (1983); Aldabe, 616 at  
11 1093; and Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984).

12 A finding of exceptional circumstances requires an evaluation  
13 of both "the likelihood of success on the merits [and] the ability  
14 of the petitioner to articulate his claims pro se in light of the  
15 complexity of the legal issues involved." Weygandt v. Look, 718  
16 F.2d 952, 954 (9th Cir. 1983), quoted in Richards v. Harper, 864  
17 F.2d 85 (9th Cir. 1988). Neither of these factors is dispositive  
18 and both must be viewed together before reaching a decision on a  
19 request for counsel under section 1915(d). Wilborn, 789 F.2d at  
20 1331.

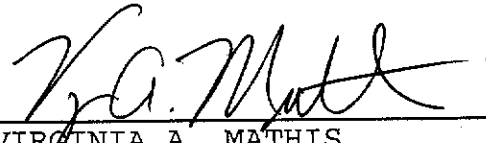
21 Here, plaintiff has not demonstrated a likelihood of success  
22 on the merits. In addition, plaintiff has failed to show that any  
23 difficulty he is experiencing in attempting to litigate this case  
24 is derived from the complexity of the issues involved. While most  
25 actions, such as the instant case, require development of  
26 supporting facts during litigation and a pro se litigant will  
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1 seldom be in a position to investigate easily the facts to support  
2 the case, this does not equate with showing the complexity of the  
3 relevant issues. Wilborn, 789 F.2d at 1331.

4 The Ninth Circuit has held that the constitutional right of  
5 access to the courts requires that the state provide assistance  
6 only through the pleading stage. Cornett v. Donovan, 51 F.3d 894,  
7 898 (9th Cir. 1995), cert. denied, 518 U.S. 1033, 116 S. Ct. 2580  
8 (1996). This case is beyond the pleading stage and at the present  
9 time does not present "exceptional circumstances" requiring the  
10 appointment of counsel.

11 **IT IS THEREFORE ORDERED** that plaintiff's motion for  
12 appointment of counsel is denied without prejudice. (Doc. 39).

13 DATED this 1st day of December, 2006.

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16 VIRGINIA A. MATHIS  
17 United States Magistrate Judge  
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